United Nations S/2003/453

Security Council

Distr.: General
25 April 2003

Original: English

Letter dated 21 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 2 January 2003 (S/2003/21).

The Counter-Terrorism Committee has received the attached third report from Costa Rica submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for this letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-34282 (E) 140503 150503

Annex

[Original: Spanish]

Letter dated 31 March 2003 from the Permanent Representative of Costa Rica to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit herewith the third report of Costa Rica on the measures taken in implementation of Security Council resolution 1373 (2001) (see enclosure).

This report was prepared in response to the note from the Chairman of the Counter-Terrorism Committee dated 25 November 2002. It includes a confidential annex containing the country's draft anti-terrorism legislation.

I would be grateful if you could arrange for this report to be published as an official document of the Counter-Terrorism Committee. However, I would ask you to ensure that its annex remains confidential.

(*Signed*) Bruno **Stagno**
Ambassador
Permanent Representative

Enclosure

Third report of the Republic of Costa Rica on the measures taken to follow up United Nations Security Council resolution 1373 (2001)

Submitted to the United Nations Security Council Counter-Terrorism Committee, in response to the Chairman's note

March 2003

Third report of the Republic of Costa Rica on the measures taken to follow up United Nations Security Council resolution 1373 (2001) submitted to the United Nations Security Council Counter-Terrorism Committee, in response to the Chairman's note

The Government of Costa Rica is pleased to submit to the United Nations Security Council Counter-Terrorism Committee its replies to the questions set forth in note S/AC.40/2002/MS/OC.197 from the Committee's Chairman, dated 25 November 2002. The replies follow the same numbering used in the note.

1.2 Provisions specifically criminalizing the wilful provision or collection of funds by the nationals of Costa Rica, or in its territory, with the intention that the funds should be used in order to carry out terrorist acts, even if the only related terrorist act takes place outside the country or no related terrorist act has actually occurred.

As explained in the previous report, financing of terrorist acts is not characterized as a specific offence in our Penal Code (Act No. 4573 of 4 May 1970 and its amendments), but the definitions of accessory (art. 47), co-perpetrator (art. 45) and instigator (art. 46) could apply to persons who finance terrorism-related offences contained in the Code (for a list of such offences, see first report). In the case of terrorist acts conducted outside the country, or not actually completed, articles 274 and 374 of the Penal Code set forth penalties for persons belonging to national or international organizations whose aim is to commit terrorist acts. This offence has been interpreted as encompassing the financing of terrorist acts, should it prove necessary to punish such acts under current legislation.

Nevertheless, in order to fulfil the requirements of the Counter-Terrorism Committee, at the initiative of the Ministry of Foreign Affairs and Worship and the Ministry of Public Security, the Interior and Police, an inter-agency commission was formed to review Costa Rican legislation on terrorism. After making a detailed analysis of Costa Rican anti-terrorism legislation, the Commission prepared a draft Law on the Strengthening of Legislation against Terrorism, which introduces amendments into both the Penal Code and the Act on narcotic drugs, psychotropic substances, unauthorized drugs, money-laundering and related activities (Act No. 7786 of 30 April 1998, as amended by Act No. 8204).

Given the requirements of the Costa Rican constitution and laws, it was decided that the best way specifically to criminalize the financing of terrorism or recruitment of persons to commit terrorist acts, within or outside the country, even when terrorist acts do not actually occur, was to provide expressly that financing and recruitment are forms of membership in an unlawful association whose aim is to commit terrorist acts.

This was found to be the best solution, in that the Costa Rican constitution and laws require a specific action to have occurred and a legal right to have been violated in order for an offence to be established. In this respect, the draft act is intended to amend articles 274 and 374 of the Penal Code, which relate to unlawful association. Article 274 provides for an aggravated offence when the association is aimed at the commission of terrorist acts, and the proposed amendment includes "the collection or provision of funds or the recruitment of persons for the purpose of committing terrorist acts".

An aggravated offence is also provided for in article 374, which refers to international associations and which would be applicable when the offence is committed outside the country. To that end, the draft law proposes to amend the current wording in order to refer to international organizations aimed, in particular, at the commission of acts of ... "terrorism, within or outside the country, including the collection or provision of funds or the recruitment of persons for the purpose of committing terrorist acts".

Consequently, if the terrorist act is committed in the country it will be punishable according to the applicable offences (see first report); a person who recruits others or attempts to finance terrorist acts for commission within the country would be prosecuted on the basis of article 274; and if the intent of the association is to commit a terrorist act outside the country, prosecution would take place on the basis of article 374, which provides for an even greater penalty.

The draft Law on the Strengthening of Costa Rican Legislation against Terrorism is to be submitted by the executive to the Legislative Assembly for consideration and approval as soon as possible.

It should also be noted that a draft general reform of the Penal Code is currently under discussion by the Legislative Assembly's Standing Committee on Legal Affairs; in addition to possible terrorism-related offences, it includes a specific offence of terrorism punishable by 10 to 24 years' imprisonment when it is aimed at:

- Creating a common danger through intent to terrorize the population or a specific population group
- Producing reprisals of a religious or political nature, or
- Obtaining a measure or concession from a public authority.

Once this separate offence of terrorism is in effect, it will be easier to apply the definitions of co-perpetrator and accessory in cases involving the financing of terrorist acts. A proposal is also expected to be made whereby the general draft amendments to the Penal Code would increase the penalties for unlawful association if the aim of the organization in question is to commit terrorist acts within or outside the country, including collection or provision of funds and recruitment of persons. Such actions would in and of themselves imply that the perpetrator belongs to the organization.

1.3 Procedure for legally freezing funds, financial assets or economic resources of persons and entities, resident or non-resident, who commit or attempt to commit terrorist acts or who participate in or facilitate the commission of terrorist acts, including the financing of terrorism.

In Costa Rica the Act on narcotic drugs, psychotropic substances, unauthorized drugs, money-laundering and related activities (Act No. 7786 of April 1998, as amended by Act No. 8204) establishes procedures for freezing funds suspected of deriving from the commission of serious offences.

The Superintendents of Financial Institutions, Securities and Pensions issue guidelines and order mechanisms for applying the financial controls provided for in Act No. 7786; based on these guidelines, the institutions in question determine whether there has been a suspicious transaction (regarding the frequency or amount

of deposits, the fact that they were not carried out in the customary manner or because there are suspicions regarding a particular individual or corporate entity and inform the respective Superintendent. Once the suspicious transaction has been detected, the respective Superintendent informs the Financial Analysis Unit of the Costa Rican Drug Institute, which determines whether there is sufficient evidence for continuing an investigation at the criminal level, through the Public Prosecutor's Office and the Unit on Money-Laundering of the Judicial Investigation Organization (OIJ). When sufficient evidence exists, the Public Prosecutor's Office requests the judge hearing the case to submit a judicial order lifting banking confidentiality and freezing the funds; the order is carried out by the OIJ Unit on Money-Laundering, which transmits it directly to the financial institution.

Further information is found in the following provisions:

"*Article 24. Financial entities subject to the provisions of this section must pay special attention to suspicious transactions, such as those not carried out in the customary manner and those which, while not significant, take place regularly without any obvious economic or legal basis. These provisions are applicable to supervisory and regulatory bodies.*"

"*Article 25. If it is suspected that the transactions described above constitute or are related to illicit activities, including transactions deriving from transfers made to or from the country, financial entities must immediately report them confidentially to the corresponding oversight body, which shall refer them at once to the Financial Analysis Unit.*"

"*Article 33. When an offence relating to the laundering of money is investigated, the Department of Public Prosecution shall request the competent court or authority, at any time and without prior notification or hearing, to issue a seizure or detachment order or to take some other precautionary measure aimed at preserving the availability of related property, proceeds or instrumentalities with a view to possible confiscation.*

This provision includes the freezing of deposits under investigation at national or foreign institutions as referred to in articles 14 and 15 of this Act, in compliance with the relevant statutory provisions."

"*Article 34. Judges may also order that the documentation or evidentiary items which institutions referred to in articles 14 and 15 of this Act have in their possession be handed over to them if required for an investigation. The decision in question shall duly substantiate the need for the furnishing of the report or evidentiary item.*"

"*Article 86. Every financial entity or entity that forms part of a financial group shall have the obligation to protect any information, documents, assets and money that may be used as evidence or proof in the investigation or in judicial proceedings. The said financial entity shall freeze the money or assets that are deposited or held in safekeeping or shall deposit them in the Central Bank of Costa Rica and inform the authorities of the measures taken. The foregoing obligations shall commence from the moment that the entities receive formal notification from the authorities indicating that an investigation or criminal proceedings have begun, or instructing the entities to file the appropriate report.*

Such measures shall not entail, either for the entities or the officials who implement them, any administrative, civil, criminal or any other liability, provided that they have acted in good faith."

"*Article 123. The Financial Analysis Unit shall request, compile and analyse records, forms and reports of suspicious transactions received from monitoring bodies and the institutions referred to in articles 14 and 15 of this Act, with a view to centralizing and analysing such information in order to investigate money-laundering activities. Such information shall be brought to the notice of the Directorate-General, which shall communicate it to the Department of Public Prosecution for the appropriate purposes.*

State organizations and institutions, in particular the Ministry of Finance, the Central Bank of Costa Rica, the Public Registry and public oversight agencies, as well as the entities referred to in articles 14 and 15 of this Law, shall be obliged to furnish the information required for the investigation of the activities and offences covered by this Law, at the request of the Unit, with the countersignature of the Directorate-General.

The Financial Analysis Unit shall also be responsible for locating and tracing property of economic interest obtained in the crimes defined in this Law.

The Department of Public Prosecution shall order financial investigations, which shall be conducted simultaneously with, or subsequent to, the investigation of the relevant offences."

As can be seen, funds cannot be frozen without a judicial order; to that end, the Financial Analysis Unit submits the relevant information to the Department of Public Prosecution in order that it may open criminal proceedings giving legal justification to the order. The funds of individuals or corporate entities being prosecuted in another country may also be frozen; this requires a rogatory letter from the other country requesting such a judicial measure (further details of this procedure are given in the next reply).

To relate these provisions to the concerns of the Counter-Terrorism Committee, as indicated in the previous reply, the draft law prepared by the Inter-Agency Commission for the Revision of Costa Rican Legislation includes amendments to the Act on Narcotic Drugs which make it possible to freeze funds intended for the financing of terrorism. To that end, a series of amendments to the Act expand the powers of the Costa Rican Drug Institute to enable it to take action to punish and prevent, in addition to money-laundering, the financing of terrorism, including the possibility of conducting investigations and freezing funds.

In addition to these amendments to the Act, proposed amendments to the Penal Code would make the financing of terrorism an offence related to unlawful association, either national (art. 274) or international (art. 374); in the context of a judicial investigation into a case involving such an offence, a judicial order would be issued to freeze and confiscate resources if there are reasons to believe that they would be used to finance terrorism, even when they are from legitimate sources.

In accordance with the foregoing and pursuant to the constitutional and legal requirements of the Costa Rican legal order, a judicial order will always be required in order to freeze and confiscate funds if there are reasons to believe that they would

be used to finance terrorism. Such an order may be issued in response to a complaint lodged by the Costa Rican Drug Institute, or through a rogatory letter from another State that is prosecuting individuals or corporate entities for terrorism-related offences. In any event, judicial proceedings must always have been initiated against persons whose resources are going to be frozen. The lists prepared by the United Nations Security Council may be of use to the Costa Rican Drug Institute and the financial institutions conducting investigations in determining whether the persons appearing on them have resources in Costa Rica; should they be found to possess such resources, however, the freezing of funds would require a judicial order attesting to the fact that the person in question is being prosecuted in Costa Rica or abroad.

1.4 Please explain how Costa Rica is able, on request of another country, to freeze funds in Costa Rica that are linked to terrorists outside Costa Rica.

In cases where another country requests the freezing of funds in Costa Rica belonging to persons or organizations located in another country and accused of belonging to a terrorist organization or intent to finance terrorist activities, the requesting Government must send a rogatory letter to the judiciary in Costa Rica; the letter is transmitted to the Secretariat of the Supreme Court of Justice by the Ministry of Foreign Affairs and Worship. The Secretariat sends it to the First Division of the Court, which refers it to the rota judge, who issues a judicial order lifting bank secrecy and freezing funds; the order is also implemented by the OIJ Unit on Money-Laundering with regard to the financial institutions in which the suspicious transactions have been conducted.

1.5 Monitoring mechanisms (for example, registration and auditing requirements) to ensure that the funds collected by non-governmental organizations or organizations claiming to have charitable, social or cultural goals are not diverted to other purposes, in particular to the financing of terrorism.

Non-governmental organizations in Costa Rica mainly take the form of associations or foundations.

The establishment, operation and dissolution of associations are regulated by the Associations Act, Act No. 218 of 8 August 1939. Article 1 of the Act states that the scope of the Act shall include associations for scientific, artistic, athletic, charitable, recreational and any other lawful purposes that are not solely and exclusively oriented towards profit.

Regarding the monitoring of associations, article 4 of the Act states that the executive branch "*... is responsible for authorizing the establishment of associations in the country and the incorporation of foreign associations, for monitoring their activities and for dissolving those that pursue unlawful purposes or undermine morality or public order, in accordance with the provisions of this Act*".

It should be noted that one of the associations' monitoring obligations is to be entered in the Associations Register, in accordance with article 5 of the Act. In addition, article 7 (e) of the Ministry of Justice Organization Act, Act No. 6739 of 28 April 1982, states that the powers of the Ministry of Justice include that of authorizing "*... the operation of associations established in accordance with Act No. 218 of 8 August 1939, or registering their statutes, as well as the legal capacity of their boards of directors*".

It should also be noted that, in accordance with article 16 of Act No. 218, associations domiciled abroad may conduct activities in Costa Rica, but only if they establish a branch office that meets the requirements of the Act and have their own legal capacity, or if their statutes are entered in the Associations Register and a general representative is appointed, in addition to fulfilling the other requirements of civil law for legal persons conducting activities in the country. The article also states that the actions in Costa Rica of associations domiciled abroad which do not comply with the aforementioned conditions and requirements shall be null and void.

Finally, it should be mentioned that, under article 33 of the Associations Act, the following constitute unlawful actions subject to penalties in the form of fines: running a secret association, even when its goals are lawful, keeping unsealed books or keeping books that are more than six months behind, in the case of a secretary or treasurer of an association, or denying access to the competent authorities. It is also considered unlawful for members of the board of directors to permit the association's funds to be used or activities to be carried out for purposes other than the association's goals as indicated in the statutes. In addition, article 34 stipulates that associations will be regarded as unlawful and therefore ordered dissolved when they appear to be practising activities that are punishable by law, contrary to morality or not in conformity with the contents of their statutes.

The legal regime governing foundations is essentially defined in the Foundations Act, Act No. 5338 of 28 August 1973, article 1 of which stipulates that foundations are recognized as having "*... legal personality as state-approved private entities established for non-profit purposes and with the goal of using the organization's funds to conduct or help conduct activities of an educational, charitable, artistic, literary or scientific nature, and in general all activities aimed at improving social welfare*".

Similarly, articles 5 and 6 of the Act stipulate that foundations acquire legal personality once they are registered in the corporations section of the Public Registry, but that, as part of the registration process, an extract of the foundation's articles of incorporation shall be published in the Official Gazette. Dissolutions, mergers, and any other acts that change the foundation's structure must also be published.

With regard to monitoring mechanisms, in addition to the registration mentioned above, article 11 of the Act requires both the executive branch and the municipality of the canton in which the foundation is domiciled to appoint representatives to each foundation's Administrative Board. In this line of ideas, Executive Decree No. 29744 of 29 May 2001, which entered into force on 4 September 2001, contains the Regulations governing aforementioned article 11, article 6 of which spells out the functions of the executive's representative to the foundation's board of directors, which include that of ensuring that the foundation's activities are in conformity with its founding charter and the regulations governing it in order that its goals may be faithfully met.

Article 15 of the Associations Act stipulates that the Controller-General shall "*monitor the operations of foundations, by any means and at any time he deems appropriate*", and that, if "*any examination reveals an irregularity, he shall inform the Attorney-General of the Republic, in order that proceedings may be initiated in the courts, if appropriate*". It should be noted that the Organization Act governing the Office of the Controller-General, which entered into force in 1995, stipulates

that this power shall be limited to foundations that administer public funds or funds of public origin. In such cases, in order to obtain a certificate of suitability organizations are required to undergo an external audit.

In addition, article 18 of the aforementioned Act No. 5338, as amended by Act No. 8151 of 14 November 2001, stipulates that foundations must have an internal auditing office, "*... which shall exercise its functions in conformity with the legislation governing the area it monitors, and in accordance with the handbooks of technical rules governing internal auditing and control issued by the Office of the Controller-General of the Republic*".

In conclusion, one of the means of channelling resources for social welfare or similar purposes is the trusteeship contract, the legal regime for which is contained in the Commercial Code and which varies according to the trustee. If a financial intermediary serves as administrator, he is subject to supervision by the General Superintendent of Financial Institutions.

Current legislation also provides for a few official entities that are bound by law to regulate non-governmental organizations administrating public funds; these include the Joint Institute for Social Aid, the National Council on Older Adults and the Social Welfare Board.

Like the aforementioned controls on the operations of non-governmental organizations, these financial controls apply to all individuals and corporate entities that conduct operations and transactions within the national financial system.

1.6 Monitoring of isolated financial transactions in which professionals are involved.

Under Act No. 7786, as amended by Act No. 8204, individuals or corporate entities that carry out the transactions mentioned in article 15 are subject to supervision as provided by the Act. This supervision, therefore, applies to the following transactions:

(a) Regular or substantial currency exchange transfer and operations using instruments such as checks, bank drafts and bills of exchange;

(b) Regular or substantial operations involving the issue, sale, encashment or transfer of traveller's cheques or postal money orders;

(c) Regular or substantial transfers of funds carried out by any means;

(d) The administration of trust funds or any type of administration of funds by individuals or corporate entities that are not financial intermediaries.

Article 16 of Act No. 7786 establishes monitoring mechanisms to detect and avoid suspicious transactions:

(a) To obtain and preserve information concerning the true identity of persons for whose benefit an account is being opened or a transaction is being carried out if doubts exist as to whether such customers are acting for their own benefit, particularly in the case of corporate entities which are not conducting commercial, financial or industrial operations in the country where they have their headquarters or domicile;

(b) To maintain named accounts. Anonymous accounts, numbered accounts or accounts appearing under fictitious or false names may not be held;

(c) To record and verify, by reliable means, the identity, representational function, domicile, legal capacity, occupation or corporate objective of persons and other identification particulars concerning them, whether those persons be regular or occasional clients. Such verification shall be carried out by means of identity documents, passports, birth certificates, driving licences, articles of incorporation and association or any other documents, whether official or private. It shall be carried out especially when business relations are being established, particularly when new accounts are being opened, deposit books are being provided, fiduciary transactions are being conducted, safe-deposit boxes are being rented or cash transactions in excess of ten thousand United States dollars (US$ 10,000) or the equivalent in other foreign currencies are being executed;

(d) To maintain throughout the course of an operation, and for at least five years following completion of the transaction, records of the information and documentation required under this article;

(e) To maintain for a minimum period of five years records of their customers' identity, books of account, commercial correspondence and financial operations so as to enable a transaction to be reconstructed or concluded.

In addition, article 20 establishes the obligation for financial institutions to record on a special form any transaction of $10,000 or more; article 24 requires them to report financial transactions that are suspicious because they do not conform to normal transaction patterns and those which are not significant but regular, with no evident economic or legal basis; article 25 requires these transactions to be reported to the relevant oversight body, which will refer the matter to the Financial Analysis Unit.

Therefore, both professionals and members of the public who conduct transactions in the framework of the institutions supervised under the system set up by Act No. 7786 are subject to the foregoing measures.

In any case, in order to extend this regulation to cover some isolated transactions that could be used to finance unlawful acts, including terrorism, in response to the concern expressed by the Counter-Terrorism Committee, the proposed amendment to this Act contained in the draft Law on the strengthening of legislation against terrorism adds a new article (15 bis) which states:

> "Article 15 BIS. Individuals and corporate entities which are engaged in economic activities other than those mentioned in articles 14 and 15 of this Act must report to the Costa Rican Drug Institute any commercial transactions carried out in a repeated manner and in cash, including transfers to or from another country, in national or foreign currency, of amounts equal to or greater than ten thousand United States dollars (US$ 10,000) or its equivalent in colones. Such economic activities include the following:
>
> (a) Bargain and sale or conveyance of real estate, weapons, precious stones and metals, works of art, jewellery, automobiles and securities;
>
> (b) Casinos, wagers and other operations related to games of chance;
>
> (c) Credit card operations;
>
> (d) Professional services.

For these purposes, the forms produced by the Costa Rican Drug Institute shall be utilized."

1.7 Measures taken to criminalize the recruitment of persons to commit acts of terrorism either inside or outside the country.

The current Penal Code does not specify that the recruitment of persons to commit acts of terrorism is a crime but, as with the financing of terrorism, the definitions of accessory, co-perpetrator and instigator could be applied to those who recruit persons to commit terrorist acts that are actually carried out.

Furthermore, as explained earlier (see reply to question 1.2), in cases where terrorist acts are executed outside the country, or are not actually committed, articles 274 and 374 of the Penal Code establish penalties for belonging to national or international organizations whose aim is to commit terrorist acts. With due respect to the Counter-Terrorism Committee, we do not share its interpretation of our criminal legislation, to the effect that if the person engaging in recruitment does not belong to a criminal organization he could not be punished under current legislation. In reality, the offence of "unlawful association" arises as soon as at least two persons agree to commit a crime. Therefore, even if the recruiter does not belong to a terrorist organization, from the moment he recruits at least one other person he has committed the offence of unlawful association.

In any case, the draft Law on the strengthening of legislation against terrorism mentioned in the reply to question 1.2 amends the corresponding articles (274 and 374) so that recruitment of persons is expressly mentioned in the law as a form of participation in the offence of unlawful association, even if the terrorist act is not executed, and, in the case of article 374, when it is to be carried out abroad.

1.8 Measures taken by Costa Rica to criminalize the use of its territories for the purpose of committing terrorist acts against other States or their citizens or for the purpose of financing, planning and facilitating of terrorist acts against other States or their citizens, even though no related terrorist acts have actually been committed or attempted.

Current legislation regarding unlawful association of an international nature (Penal Code, art. 374) does not spell out whether the offences for which the association was established must be committed inside or outside the country. Nevertheless, we believe that it can be interpreted in both ways, especially regarding article 374 which mentions the crimes of trafficking and terrorism, which usually have transnational implications. In speaking of terrorist acts, it does not specify whether they are only against States or only against citizens of other countries; therefore, it is understood that it would apply in both cases.

Nevertheless, for the purpose of eliminating any doubt in the interpretation, the draft Law on the strengthening of legislation against terrorism proposes that article 374 should be amended to indicate expressly that the aim of the association is "to commit acts of terrorism inside or outside the country".

1.9 According to the supplementary report, terrorism is considered an international crime. In this context, please confirm that article 7 of the Penal Code has the effect that a person who is alleged to have committed a terrorist act outside Costa Rica can be punished under Costa Rican law for that offence. If not, how would Costa Rica deal with such a person if the person were not

extradited (for example, if no extradition treaty exists with the requesting state), in order to meet the requirement of subparagraph 2 (e) of resolution 1373? Please provide the full text of articles 6, 7, 8 and 374 of the Penal Code.

First of all, the text of the requested articles follows:

Possibility of initiating proceedings for punishable acts committed in other countries

Article 6

"Legal proceedings may be initiated for punishable acts committed in other countries, and Costa Rican law may apply, when such acts:

1. Produce or may produce effects wholly or in part in the national territory;

2. Were committed by persons in the service of Costa Rica, and such persons have not been tried in the place where the acts were committed owing to diplomatic immunity or their immunity of office; and

3. Are perpetrated against a Costa Rican or the rights of a Costa Rican."

International crimes

Article 7

"Irrespective of the provisions in force in the place where a punishable act is committed and the nationality of the perpetrator, persons committing acts of piracy, genocide, counterfeiting of money, credit instruments, banknotes and other bearer bonds; engaging in the trafficking of slaves, women or children; engaging in the trafficking of narcotics or obscene material or committing other punishable acts against human rights as stipulated in treaties to which Costa Rica is a party or in this Code shall be subject to punishment under Costa Rican law."

How the aforementioned crimes may be prosecuted

Article 8

"For the offences named in article 5 to be open to prosecution in Costa Rica, all that is required is action by the State. For the offences contemplated in articles 6 and 7, the offender must be in the national territory. For those in article 6, proceedings may commence when a charge is laid against the defendant; for those in article 7, criminal proceedings may be instituted only through a competent authority."

It is also appropriate to give the text of article 5 governing extraterritoriality, to which article 8 of the Penal Code of Costa Rica refers.

Extraterritoriality

Article 5

"The criminal law of Costa Rica shall also apply to punishable laws committed abroad whenever:

1. they impugn the internal or external security of the State, or its economy, and

2. they are committed against the public administration or, by officials in its service, whether Costa Rican citizens or others."

International crimes

Article 374

"A sentence of 10 to 15 years' imprisonment shall be imposed on anyone heading or participating in international organizations that engage in trafficking of slaves, women, children or drugs or in acts of terrorism, or that violate provisions of human rights treaties to which Costa Rica is a party."

In accordance with current legislation, unlawful international association to commit terrorist acts is covered under Chapter XVII concerning offences against human rights. As stated earlier, in accordance with article 7 of the Penal Code, anyone who commits "punishable acts against human rights as stipulated in treaties to which Costa Rica is a party" shall be subject to punishment. In other words, unlawful association to commit terrorist acts shall always be punishable in Costa Rica even when the acts are committed outside the country, in the same way as human rights violations that may occur as a result of terrorist acts. In any case, as explained above, the draft Law on the strengthening of Costa Rican legislation against terrorism includes a proposed amendment of article 374 to include an express reference to terrorist acts committed outside the country.

It should also be noted that Costa Rican law does not make extradition subject to the existence of an extradition treaty. The Extradition Act (Act No. 4795 of July 1971) and its amendments govern the conditions and general procedure for extradition to and from countries with which no treaties exist, and for extradition to and from countries with which treaties do exist. The general extradition procedure governed by the Act is applicable to all perpetrators, accomplices or accessories awaiting trial or serving sentences for crimes committed outside national territory.

Limitations on extradition are set forth in article 3 of the Act when the following circumstances occur:

(a) The person sought is Costa Rican, in which case he will be tried before the courts;

(b) The extradition request is based on acts that are or have been the subject of proceedings in Costa Rica;

(c) The person sought is being tried in Costa Rica for another offence preceding the request, in which case extradition can be ordered once he is acquitted or has served the sentence for this other offence;

(d) The act was not an offence in Costa Rica or the statutory limitation period for the offence or the penalty has expired;

(e) The sentence imposed for the alleged offence is under one year of imprisonment and the accused is ordered held in pre-trial detention without a definite charge;

(f) The offence was not committed in the territory of the requesting State or did not produce effects in that State;

(g) The offence is a political offence or associated with a political offence;

(h) The purpose of the extradition is political;

(i) The offences would be punishable by execution, except when the requesting State undertakes to impose the penalty immediately below this; if not, the case will be tried in Costa Rica;

(j) The accused would have to appear before a special tribunal or court;

(k) The accused has been granted political asylum.

Finally, it should be noted that article 8 of the draft Penal Code, concerning extraterritoriality, allows for the possibility of initiating legal proceedings in Costa Rica for acts committed abroad, when they jeopardize the internal or external security of the State, in addition to crimes against humanity and other international crimes. The draft Penal Code includes unlawful association and the offence of terrorism in Chapter X, Offences against Public Security.

1.10 Please explain whether Costa Rica intends to introduce legislation for providing mutual assistance related to terrorism, in order to facilitate assistance to any requesting country. Does the Extradition Act provide for extradition on the basis of treaties only?

Costa Rica has signed the following conventions on criminal or legal mutual assistance:

(a) Central American Treaty on Mutual Legal Assistance in Criminal Matters, signed on 29 October 1993 and ratified by Act No. 7696 of 30 October 1997;

(b) Treaty on extradition and mutual juridical assistance in criminal matters between Costa Rica and Mexico, signed on 13 October 1989 and ratified by Act No. 7469 of 20 December 1994;

(c) Convention on judicial assistance in criminal matters between Costa Rica and Paraguay (pending approval by the Legislative Assembly);

(d) Convention between Costa Rica and Argentina on mutual judicial assistance against illicit drug trafficking (pending approval by the Legislative Assembly);

(e) Memorandum of understanding on judicial cooperation between Costa Rica and Colombia (primarily for combating illicit drug trafficking);

(f) Inter-American Convention on Mutual Assistance in Criminal Matters (submitted to the Legislative Assembly for its approval).

Moreover, under the draft Law on the strengthening of legislation against terrorism, the phrase **"as well as crimes related to the financing of terrorism"** has been added to articles 30 and 31 of Act No. 7786, amended by Act No. 8204, concerning the cooperation that must be provided by the Costa Rican Drug Institute and by entities charged with oversight and supervision; the institutions subject to the provisions of the law; the competent authorities of other States; the investigations, trials, and procedures referring to crimes addressed by this Act; and international

cooperation agreements signed by entities of the national financial system with a view to ensuring the free transfer of information related to accounts opened in other States and linked to investigations, trials and procedures related to crimes typified in this Act. It is also important to note that article 103 of the aforementioned Act states: "Within its sphere of competence, the Institute may agree with foreign authorities to conduct individual or joint investigations, in accordance with the terms of each legislation".

1.11 Please provide a progress report of the ratification by Costa Rica of the six international instruments relating to terrorism that are in the process of being ratified. Please outline the provisions that give effect to those instruments in domestic legislation.

The current status of the ratification process regarding conventions and protocols that Costa Rica either has already ratified or will ratify is as follows:

1. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed at Rome on 10 March 1988. Signed by Costa Rica. Approved by Act No. 8258 of 18 April 2002, and published in Official Gazette No. 204 of 23 October 2002. The instrument of ratification has been submitted to the International Maritime Organization.

2. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at Rome on 10 March 1988. Signed by Costa Rica. Approved by Act No. 8264 of 23 April 2002, and published in Official Gazette No. 203 of 22 October 2002. The instrument of ratification has been submitted to the International Maritime Organization.

3. International Convention for the Suppression of the Financing of Terrorism, signed at New York on 9 December 1999. Approved by Act No. 8257 of 18 April 2002, and published in Official Gazette No. 204 of 23 October 2002. Ratified on 24 January 2003.

4. International Convention against the Taking of Hostages, signed at New York on 17 December 1979. Not signed by Costa Rica. Approved by Act No. 8253 of 18 April 2002, and published in Official Gazette No. 203 of 22 October 2002. Ratified on 24 January 2003.

5. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Signed at New York on 15 November 2000, and signed by Costa Rica. Approved by Act No. 8315 of 16 September 2002, and published in Official Gazette No. 212 of 4 November 2002. The instrument of ratification has been submitted to the United Nations.

6. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980. Not signed by Costa Rica. Approved by Act No. 8265 of 23 April 2002, and published in Official Gazette No. 221 of 15 November 2002. The instrument of accession has been submitted to the United Nations.

7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988. Approved by Act No. 8263 of 23 April 2002, and published in

Official Gazette No. 223 of 19 November 2002. The instrument of ratification has been submitted to the International Civil Aviation Organization (ICAO).

8. Protocol against the Smuggling of Migrants by Land, Sea or Air, supplementing the United Nations Convention against Transnational Organized Crime. Signed at New York on 15 November 2000. Signed by Costa Rica. Approved by Act No. 8314 of 16 September 2002, and published in Official Gazette No. 221 of 15 November 2002. The instrument of ratification has been submitted to the United Nations.

9. United Nations Convention against Transnational Organized Crime. Signed at New York on 15 November 2000. Signed by Costa Rica. Approved by Act No. 8302 of 29 August 2002, and awaiting publication.

10. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. Approved by Act No. 8317 of 3 October 2002, and awaiting publication.

11. Inter-American Convention against Terrorism. Signed on 3 June at Bridgetown, Barbados. Signed by Costa Rica. Under review before the International Relations Committee.

With regard to the domestic legislation giving effect to those instruments, Annex 1 of the second report of the Republic of Costa Rica concerning measures taken to implement United Nations Security Council resolution 1373 (2001) provided a table showing the main provisions of international conventions on terrorism and related national legislation.

1.12 According to the supplementary report, terrorism is not considered a political crime in Costa Rica. However, according to the same report, article 3 of the Extradition Act states that extraditions shall not be offered or granted when a crime is political or politically related under Costa Rican law. In addition, some terrorist-related offences, mentioned in the report, are said to be crimes that can be considered political. As subparagraph 3 (g) of the resolution requires States not to refuse extradition of alleged terrorists on grounds of claims of political motivation, please explain how Costa Rica intends to deal with this requirement entirely.

As indicated in the second report, Costa Rican law does not recognize terrorism and related crimes as political crimes, and they are extraditable. Political crimes are regarded as those that are targeted solely at the political order. Notable in this context is Title XII of the Costa Rican Penal Code, "Crimes against the political authorities and the constitutional order", whose Section I, entitled "Political attacks", includes the following crimes:

Rebellion

Article 294

A prison sentence of two to 10 years shall be imposed on anyone who takes up arms in order to change the Constitution, depose any agencies of the State, or impede, even temporarily, the free exercise of its constitutional faculties or its formation or renewal in legal terms and forms.

Violation of the principle of electoral rotation

Article 295

The penalties set out in the previous article shall apply to anyone who violates the principle of electoral rotation or who fails to obey the duty to place the security forces at the disposal of the constitutional Government.

Propaganda against the constitutional order

Article 296

A prison sentence of six months to three years shall be imposed on anyone engaging in public propaganda with a view to replacing the agencies created by the Constitution by unconstitutional means or to abolishing its fundamental underlying principles.

Rioting

Article 297

A prison sentence of one to four years shall be imposed on anyone who publicly rises up, in a group of 10 or more, to impede the execution of the laws or the decisions of public officials or to force them to take a certain measure or give some form of concession.

Contempt for national symbols

Article 298

A prison sentence of one month to two years and a fine of 30 to 90 days' wages shall be imposed on anyone publicly expressing contempt for or insulting the national flag, crest, or anthem.

Section II sets out the common provisions applicable in the case of political attacks:

Responsibility of instigators or leaders

Article 299

Whenever rebels or rioters shall surrender willingly to the legitimate authorities, or disperse, either before such authorities have issued a warning or because of such a warning, without having committed any other harm beyond a brief disturbance of public order, only the instigators or leaders shall be punishable, and they shall receive half the penalty indicated for the offence.

Conspiracy

Article 300

A prison sentence of one to five years shall be imposed on anyone taking part in a conspiracy involving three or more persons to commit the crime of rebellion.

Corruption of the security forces

Article 301

Anyone who shall attempt to corrupt the security forces, usurp their mandate, or that of a ship or vessel under their command, or who shall illegally retain a political mandate in order to commit rebellion or riot shall receive half the penalty indicated for the attempted offence.

Infringement of the duty to resist

Article 302

A prison sentence of one month to two years shall be imposed on any public official who fails to resist a rebellion or riot with all available legal means.

Special aggravating circumstances

Article 303

The penalties established under articles 292, 295, 298 and 299 shall be increased by one third in the case of senior or other public security officers participating in the offences described, using the weapons or materials entrusted or provided to them for the performance of their duties.

As was also noted in the second report, certain other crimes, such as treason, sedition and espionage, have traditionally been regarded by legal opinion as political crimes although they are not expressly defined as such in Costa Rican law. The Penal Code lists such crimes under Title XI, **"Crimes against national security"**, which include treason (art. 277) and espionage (art. 288), among others.

Section I
Acts of Treason

Treason

Article 277

A prison sentence of five to 10 years shall be imposed on any Costa Rican citizen taking up arms against the nation or joining with its enemies by providing assistance or relief.

Aggravated treason

Article 278

A prison sentence of 10 to 25 years shall be imposed whenever the offence described in the previous article involves one of the following circumstances:

1. It was carried out in order to subject the nation to foreign domination, whether totally or partially, or to undermine its independence or integrity; or

2. The perpetrator of the offence has attempted to induce or persuade a foreign power to wage war against the nation.

Section II
Crimes compromising the peace and dignity of the nation

Espionage

Article 288

A prison sentence of one to six years shall be imposed on anyone procuring or unduly obtaining secret political or security-related information concerning the nation's defence forces or its foreign relations.

Crimes related to terrorism are addressed in other sections of the Penal Code. For example, article 374 (International crimes) is found under Title XVII, "Offences against human rights"; article 274 (Unlawful association) under Title X, "Offences against public order"; articles 246 (Arson or explosion), 247 (Devastation), 248 (Failure to use defences against disasters), 250 (Manufacture or possession of explosive materials), 251 (Danger of shipwreck and air disaster), 252 (Creating danger for land transport), 253 (Attacks on industrial plants or on energy or communications systems), 258 (Piracy) and 260 (Hijacking or destruction of airplanes) under Title IX, "Crimes against public safety"; article 215 (Kidnapping for extortion, with aggravated penalties for acts of terrorism) under Title VII, "Crimes against property"; and so forth.

In conclusion, none of the above crimes related to terrorism could be considered a political crime. In any event, it is believed that the provision on non-extradition for political or related crimes is intended to guarantee the safeguarding of the rights of the detainee and a fair trial, just like the other exceptions included in the Costa Rican Law on Extradition. Moreover, the country's legislation and judicial apparatus contain enough provisions to prevent other outcomes. As was also mentioned previously, for crimes to be regarded as political crimes it is not sufficient merely to claim that they are such. Some of Costa Rica's extradition treaties even expressly state that terrorism shall be regarded as a political crime for the effects of extradition, as noted in the previous report.

2. Assistance and guidance

The Government of the Republic of Costa Rica welcomes the offer of assistance in implementing resolution 1373 (2001), and respectfully informs you of the two areas in which Costa Rica would be interested in exploring the possibility of assistance:

1. Training of Government officials in matters related to the implementation of resolution 1373 (2001) and to financial oversight, especially in the matter of pensions and securities;

2. Analysis of the institutional legal framework of financial oversight, both to prevent the financing of terrorism and to ensure the legality of capital flows in general. The Government of Costa Rica would therefore be very glad to explore the possibilities offered by the AML/CFT Programme of the International Monetary Fund and the World Bank.

Moreover, Costa Rica is fully prepared to exchange any necessary information regarding investigations under way, as well as to conduct joint investigations. We would also gladly exchange experience in the matter of financial investigations (Costa Rican Drug Institute, Financial Analysis Unit, Financial superintendencies, etc.), especially with any Latin American countries requesting such an exchange. Costa Rica's experts in these and other terrorism-related areas would be happy to provide any assistance that may be requested of them.